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Article 8: Investment Securities

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gence in such cases is on the person entitled under the document];

Note: The brackets in (1)(b) indicate that State enactments may differ on this point without serious damage to the principle of uniformity.

CASES ANNOTATED UNDER OTHER SECTIONS

*WORLD PRODS., INC. v. FREIGHT SERVICE, INC.
222 F. Supp. 849 (D.N.J. 1963)

See the Annotation to Section 7-204, *supra*.

ARTICLE 8: INVESTMENT SECURITIES

SECTION 8-106. Applicability

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

CASES ANNOTATED UNDER OTHER SECTIONS

WELLAND INV. CORP. v. FIRST NAT'L BANK

* 81 N.J. Super. 180, 195 A.2d 210 (1963)

See the Annotation to Section 8-406(1), *infra*.

SECTION 8-406. Duty of Authenticating Trustee, Transfer Agent or Registrar

- (1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities
 - (a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
 - (b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

ANNOTATION

WELLAND INV. CORP. v. FIRST NAT'L BANK

81 N.J. Super. 180, 195 A.2d 210 (1963)

The plaintiff, a New Jersey investing corporation, advanced money to Lane receiving as security his pledge of common stock certificates of defendant issuer, Mercury Photo., a Delaware corporation. The value of the stock dropped appreciably and upon Lane's failure to repay and his refusal

* Code constructed but did not govern the case.

to put up additional collateral, the plaintiff presented the stock certificates to the defendant bank, the New Jersey transfer agent of the issuing corporation for transfer into its own name. The bank refused to effect the transfer without the issuer's approval, which was not forthcoming since it claimed that the shares presented for transfer were issued for investment purposes only, were not registered and were not subject to unrestricted transfer.

The holder sought to establish its legal title and filed a motion for summary judgment on the issue of the transfer agent's liability for refusal to register the stock transfer. The transfer agent also moved for summary judgment alleging that, as a matter of law, it cannot be liable to the plaintiff since under Section 8-406(1)(b), its substantive rights and liabilities are governed by the same substantive law as the issuer, which, upon application of Section 8-106, is the law of the issuer's state of incorporation, Delaware. Under that law a transfer agent has no liability for mere refusal to transfer. The court denied the transfer agent's motion, holding that Section 8-406 is not a conflict of laws section as is Section 8-106, but that it merely equates the transfer agent's obligations to the holder with those of the issuer. Whichever state law applies to the issuer's obligations, the transfer agent may not avail itself of Delaware substantive law pertaining only to transfer agents. The plaintiff's motion was also denied since the fact question of whether it was a bona fide purchaser must be determined before a final decision could be rendered.

COMMENT

This case presented a conflicts of law question which was correctly resolved by reference to Section 8-106 which provides that the rights and duties of the issuer with respect to registration of the transfer of securities is governed by the law of its incorporating state. To determine the duties of the transfer agent, Section 8-406(1) was controlling.

Under Section 8-406(1) a transfer agent has two separate and distinct duties. The first is a duty of due diligence and good faith owed to the issuer, and the second is a duty owed to the holder which is the same obligation as that of the issuer to the holder. The court's interpretation of Section 8-406(1), in determining the obligation of the transfer agent to the holder, appears to be the correct one in light of the Official Comment to that section and the New Jersey Study Comment. The latter indicates that this section "assimilates the *duties* and *rights* of a transfer agent . . . to those imposed on the issuer himself in relation to the holder." However, the specific language of Section 8-406(1)(b) speaks of the transfer agent having only the "same obligation" to the holder and the same *rights* and *privileges* as the issuer. The words *duties* and *liabilities* are conspicuous in their absence. An alternative interpretation of this section seems permissible. The "same obligation" referred to in subsection (b) could refer to the duty owed by the transfer agent to the issuer provided in subsection (a). The net effect of the section under this interpretation would not always result in equal obligations of the issuer and the transfer agent. Such an instance would be where the issuer in a non-code state has a greater duty owed to the holder than that of due diligence and good faith. In that case a transfer agent in a Code state would

be held only to the duty of due diligence and good faith as the "greater" duty owed by the issuer certainly cannot be considered as one of its "*rights* and *privileges*."

It is clearly not "at once apparent," as the court stated, that the obligations of the transfer agent and the issuer "must be the same." A more precise drafting of Section 8-406(1) would have removed this possible ambiguity from its meaning.

T.H.T.

ARTICLE 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

SECTION 9-102. Policy and Scope of Article

- (1) Except as otherwise provided in Section 9-103 on multiple state transactions and in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state
 - (a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

ANNOTATION

†BRUCE LINCOLN-MERCURY, INC. v. UNIVERSAL C.I.T. CREDIT CORP.
325 F.2d 2 (3d Cir. 1963)

The plaintiff automobile dealership and the defendant credit corporation entered into an agreement for the wholesale financing of new cars. The terms required the credit corporation to pay the invoice price to the manufacturer upon the dealer's receipt of new cars, and upon the sale of the cars, the dealer to pay the credit corporation the sum paid to the manufacturer plus interest. Plaintiff later borrowed ten-thousand dollars from the defendant as a capital loan to be repaid in a year for which it pledged shares of its corporation as collateral. The relationship between the parties had already become strained when a local officer of defendant called for a meeting at a crowded restaurant and boisterously demanded immediate payment of the balance of the note. The plaintiff paid the entire amount the next morning and notified the defendant that their business relationship was terminated. Plaintiff sought wholesale financing from another company, which eventually was denied plaintiff. Some time after the termination of business between the parties when the new model cars were introduced, the manufacturer erroneously billed defendant for five cars delivered to plaintiff which defendant's home office mistakenly paid. The plaintiff accepted the cars believing they were financed by its new creditor although the invoices on the cars indicated that

† Based on 1953 Code.